

## ***INTRODUCTION***

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## INTRODUCTION

### Statement of Problem

**W**hile in India are engaged in the task of building up a welfare state. The concept of 'social welfare state' has come to stay and this has emphasised the primary need of vigilant and courageous press. It is (the press) one of the important institutions in an open society and a forum that has the privilege of reaching large number of people. Free press is essential instrument for maintaining openness in society and also for reforming it. In a society, where overwhelming millions are mute, the access to a forum that reaches large number of people could be viewed as a trust, to be exercised on behalf of the people and for the good of the people at large. Written word is only one of the instrument of change and it has only a limited effect in society such as ours; nevertheless it serves as an important source of feed back of information.<sup>1</sup>

Realising the role, which press has to play in contemporary society, **J.S. Mill** rightly said that, "*If the whole mankind minus one person were of one opinion and one person were of contrary opinion, the mankind would be no more justified in silencing that one person, than he, had he the power to do so, would be justified in silencing the whole mankind*".

The press, at present is one of the most effective media of expression. In a democracy an individual should have a right to learn facts; to hear

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1. Dhirendra Krishna: Role of Press in Improving Public Administration. The Indian Journal of Public Administration Vol. XXXIV No.4. 1988. at p.898

all sides of a case, to form his own opinion and if he so desires to give expression to it. The press is one of the channels through which such goal is possible. The freedom of the press, therefore, becomes a matter of vital concern.

The concept of the role of free press in a democratic setup is best defined by the **U.K. Royal Commission on the press** in the following words.

*“The democratic form of society demands of its members an active and intelligent participation in the affairs of their community whether local or national. It assumes that they are sufficiently well informed about the issues of the day to day to be able to form the broad judgement required by an election and to maintain between elections and vigilance necessary in those whose governors are their servants and not their masters”.*

**Freedom of press is essential to political liberty. Where men can not freely convey their thoughts to one another, no freedom is secure where freedom of expression exists, the beginnings of a free society and a means for every extension of liberty are already present. Free expression is therefore, unique among liberties, it promotes and protects all the rest.<sup>2</sup>**

Talking about the freedom of press, **Pt. Jawaharlal Nehru** once said : *“I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a regulated or suppressed press”.* When he said this he was echoing the ideas of **Jefferson** who once said that *“..... were it left to me to decide whether we should have Gov-*

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2. A Free and Responsible Press: Hutchinson Committee Report at p.6

ernment without newspaper or newspaper without a Government, I should not hesitate a moment to prefer the latter".<sup>3</sup>

Addressing a seminar in Srinagar in 1970 on "Freedom of the Press" then Minister of State for Information and Broadcasting, Government of India **Mr. I.K. Gujral** said, "It is known to you, Mr. President, and to all of us that communication in the modern life is a carrier of social process and as such I think in a thousand unseen ways this carrier influences the political, social and cultural life of a community in which this medium functions. But this social process to a very great degree depends on the communication, exchange and transmission of knowledge. And since knowledge is an integral part of this carrier, I think knowledge again depends upon communication. Thus the social process and social change are inseparable from the means of communication, and therefore, the role of mass media can not be ignored. It is not possible for us to separate them".

The term 'press' is used in different senses and with different connotations. The Lexicon Webster's Dictionary define the press as ' a machine for printing; a printing press; printed literature in general, especially newspapers; with the; newspaper reporters; a printing, publishing, or broadcasting establishment; and its personnel.'<sup>4</sup>

In the aforesaid sense 'press' not only means all plants, machinery and other materials by means of which printing is done but also includes any printed literature, news establishment including a news agency.

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3. Quoted in 'Voice of People' by Reo. M. Cheristenson & Robert O. Mc. Williams at p. 119

4. Webster Lexicon Dictionary Vol. II at p. 754

The term 'press' though in a narrower sense refers to the 'newspaper' in particular<sup>5</sup> but in its wider meaning it includes any book pamphlet or other document. It therefore, not only means any machinery which is used in printing and news establishment but also newspaper, book, pamphlet or other document.

The freedom of press owes much to Jhon Milton's pamphlet speech to parliament, to which he gave the resounding title 'Areopagitica'. The argument **Milton** used for unlicensed printing were for the most part already afloat the British air; they were chiefly appeals to experience and good sense. In the last point **Milton** comes to nub of principle and rises to the full grandeur of his subject. His words, often quoted may here be brought to mind again. **"Though all the winds of doctrine were let loose to play upon the earth, so truth be in the field, we do injuriously by licening and prohibiting to misdoubt her strenght. Let her and Falsehood grapple; in a free and open encounter. Her words confuting is the best and surest suppressing."**<sup>6</sup>

The contents of the expression freedom of press have been variously understood. some have understood as meaning freedom to publish any matter by printed words, whether by way of statement or comments without any legal restraint or prohibition. Others have coupled it with freedom from prejudices and pre-concerned notions. Some others have thought that freedom of press consists in freedom from executive control. Another opinion suggests that it consists in freedom from the influence of

5. Under Section 1 (1) of Press and Registration of Books Act, 1867 a newspaper means 'any printed periodical work containing public news or comments on public news. Thus it not only presents facts but also gives opinions through its editorials.

6. Quoted in Freedom of Press - A Frame work of principles by Hocking, W.E at p.5

advertisers and proprietors or pressure groups. Still others have read into it the notion of freedom from want ie. freedom from dependence on others for financial assistance.<sup>7</sup>

Freedom of press has three essential elements

- i) Freedom of access to all sources of information;
- ii) Freedom of publication; and
- iii) Freedom of circulation

It is the function of the press to disseminate correct news and spread the truth. Free flow of information is essential to a democratic society and freedom to have access to public records is an important aspect of freedom of press. If the press has to rely on what the government chooses to supply it, the picture may be one sided and distorted and may not represent the truth. It is necessary, therefore, that the press should have access to public records but the government is reluctant to allow the press to have access to such records and has often denied it under the pretexts ie. defence, national security etc.

Though freedom of thought is a personal freedom, freedom of expression and publication, which the press enjoys, is a collective freedom. It includes not only the right to propagate one's views but also the views of others. It follows that contributors to newspapers and journalists enjoy the same rights and privilege as the press.<sup>8</sup> The freedom of publication is secured by freedom of circulation. The Supreme Court as early as in 1950 held that freedom of circulation is as essential to the freedom (of expression) as the liberty of publication. Indeed without circulation

7. Kedar Ghosh: Freedom or Fraud of the Press at p.4

8. Sarkar R.C.S: The Press in India at p. 9

publication would be of little value.<sup>9</sup> Explaining it further the apex court held that "Freedom of expression covers both content and circulation if any law unreasonably curtails, directly or indirectly, the right of circulation, it would be void".<sup>10</sup>

The Constitution of India unlike the American Constitution does not expressly provide the freedom of press as a fundamental right. Instead, it provides the guarantee of freedom of speech and expression but the analysis of discussion held in **Constituent Assembly** leaves no doubt that it was made a part of freedom of speech and expression.<sup>11</sup> Judicial verdicts of the Supreme Court in a catena of cases have confirmed it.<sup>12</sup> This right, like other rights is not absolute as certain amount of control over the press is of course necessary for the protection of the right where the right has to be harmonised with duties of the individual constituting the society. The right must be subjected to certain restrictions. To achieve this goal the Constitution itself subjects the freedom to Article 19 (2) which empowers the state to impose reasonable restrictions upon the press.

Prior to the amendment Act of 1951 restrictions were not justiciable. The Constitutional Amendment Act, 1951, which added three more grounds under Article 19(2) had one noteworthy feature which made the restrictions reasonable with the result that the courts were given the power to

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9. Romesh Thapper V. State of Madras AIR 1950 Sc 124

10. Express Newspapers V. Union of India AIR 1958 Sc. 578

11. C.A.D. Vol VII at p. 780

12. The Supreme Court since the constitution came into force has held on various occasions from Romesh Thapper (1950) to TATA Press Company's case (1995) that freedom of press is included under Article 19(1)(a) as a part of freedom of speech and expression.

decide in any particular case whether the restrictions imposed upon the press are reasonable or not. Article 19 (2) thus became justiciable like other restrictions enumerated under clauses (3), (4), (5) and (6) of Article 19 which were justiciable from the very beginning.

Besides the restrictions provided under Article 19 (2) the need to impose the restrictions on the freedom of press on some other genuine grounds is universally recognised and no sensible person will ever say that the state should not be armed with adequate powers to deal with emergency. Under Article 250 of the Constitution, Parliament becomes empowered to legislate even with respect to the subjects enumerated under state list till the emergency exist and, therefore, any law so made affecting the freedom of press can not be challenged before any court of law on the ground of legislative incompetency.

The 44th Constitutional Amendment Act, 1978 to a little extent has restricted the scope of Article 358 of the Constitution. No restriction can be imposed now upon the press if the emergency is declared under Article 352 of the Constitution on the ground of armed rebellion. Moreover a law which seeks to curtail the freedom under Article 358 must bear the requisite recital.

The press has often found itself caught in the dragnet of parliamentary privileges and it is an area where the press requires a very cautious approach to deal with. It has been held by the Supreme Court that the House is the sole judge to the occasion and the manner of its exercise and that Article 105 (3) or 194 (3) are not subject to Article (19)(1)(a).

The judicial verdicts, therefore, have further complicated the work of a journalist.

The press at present is facing various new challenges in the form of mob violence, militancy, monopolistic attitude of press barons and allurement of journalists and workers of the press by the vested interest politicians to suit their own interests. In addition to the above stated pressures which the press is already facing, the government too, sometimes leaves no stone unturned to harass the press where its wishes are not complied with. In a democracy the press discharges its function as the watchdog of public interest and it is destined to get into the hair of the government. Thus inevitably, the press and the government find themselves at cross purpose with each other, and a constant confrontation is the out come. The following charges are levelled by the successive Governments against the press.

- (1) Press is a source of much tension, it is a nuisance for working of the state and various public sectors of civil society;
- (2) The press is monopolistic, charges the Government by referring that the First Press Commission also aired such charges with added emphasis;
- (3) The press has become a source of entertainment rather than of information and for most of the part failing to make the important news understandable;
- (4) The press has lost much of its prestige as a leader of public opinion as it has fully involved itself with business activities and making only profits; and
- (5) The press has failed to contribute to the developmental goals.

The state, therefore, in order to force the press to dance upon her tune adopts several measures ie. pre-censorship, prohibiting the circulation in particular areas under the protective cover of Article 19(2) of the Constitution. It also adopts punitive measures against the press by imposing excessive tax upon it and by denying various facilities ie. electricity, land for constructing office etc.

The government in order to muffle the voice of the press has introduced special bills. One of them was the Bihar Bill, introduced in the House in 1982. It created an opportunity to expose how the state can design the law to harass the press by making the provisions more stringent than necessary. A lot of hue and cry was raised in the press against it and after one year the Bill lapsed quietly. Similar laws were also intended in the states of Tamil Nadu and Orissa and the State of Jammu & Kashmir. Not lagging behind the Central Government also introduced the Defamation Bill in the Lok Sabha on Aug 29, 1988. The most controversial provision of the Bill was section 13, whereby a journalist might have been lodged in jail for a minimum period of one month if he failed to disprove the violation of law. It also placed the newspaper in place of prosecutor while at the same time the state with its police powers and its various agencies would have stand between the press and proof available in its vault protected by right of privilege. The Bill, therefore, also violated the rule of natural justice provided under Article 21 of the Constitution. But all round condemnation both in side and out side the Parliament forced the government to appoint a five member Cabinet Committee with Mr. H.K.L. Bhagat as its convenor to look into the matter. The Committee recommended the withdrawal of the Bill and the government did accordingly.

The position of press in India, in the light of aforesaid facts seems to be ambiguous. The freedom of press, on the one hand is provided as a fundamental right under the caption freedom of speech and expression under Article 19 (1) (a) of the Constitution but on the other hand the government by adopting various measure always try to keep the press under her control. In the light of these two conflicting facts the object of the study is to find out.

- (1) Whether or not the press enjoy the freedom as guaranteed under Article 19 of the Constitution? and ;
- (2) The role being played by the Supreme Court in protecting the freedom of the press, as the final interpreter of the Constitution and enforcing authority of fundamental rights.

## **SCOPE**

Legislation having relevance to the press may be divided as following:-

- (A) Legislation which primarily or exclusively concern the press e.g. Press and Registration of Books Act. 1867 and Press Council Act, 1978.
- (B) Laws under which speech or writing of certain categories are punishable or actionable, being legislation which is not aimed only at the press but would take within its coverage the press as well as other forms of written or oral expression.

The legislation considered in the present study belongs to the second category, comprising a number of enactments regulating the press media.

Though the major part of the study is related to the newspapers but other forms of print media have also been included, wherever required. In other words the terms press has been used in wider context.

#### **RESEARCH METHODOLOGY -**

The present work is based upon Doctrinal Research Methodology. Being library based work the text books, reference books, journals, reports of various commissions appointed to look into the various aspects of the press have been used extensively. Beside above stated sources dissertations and doctoral thesis have also been used in the accomplishment of the present work.

#### **CHAPTERISATION**

Chapter first contains a general discussion on the freedom of press where the concept and importance of free press in present society has been discussed.

To trace the origin and development of any institution is of vital importance to work on that subject. To fulfill this requirement, the second chapter is devoted to the historical development of the press. An attempt has been made under this chapter to bringout the growth of press and press laws in India.

The sope of the freedom of press is discussed in the third chapter of the present study with the help of case law decided by the Supreme Court. Though the work is based on case law decided by the apex court, but at places where no case by the Court is reported, the judgements of various High Courts have been referred in order to assess the ambit of the freedom. This chapter consists of two parts. The deliberations held in

the Constituent Assembly are analysed in part A. While part-B which again consists of two sub-parts evaluates the scope of freedom during peace time under sub-part (i), and the consequences of Emergency declared under Article 352 of the Constitution on the aforesaid freedom under sub-part (ii).

The Constitution under Article 19 (2) empowers the state to impose the reasonable restrictions on the freedom of press on certain grounds. The material point of the provision is that restriction must be reasonable. An analysis of different opinions expressed by the Supreme Court to assess the reasonableness of restriction is made under chapter IV of the present work.

Fundamental rights are one of the most important feature of the Indian Constitution. But like any other democracy our Constitution too attaches great importance to parliamentary privileges. These two concepts often conflict with each other. Under chapter Vth of the thesis a discussion, therefore, has been made on the relation between the freedom of press and parliamentary privileges.

The Supreme Court is not bound by its own decisions. Consequently, the Court is empowered to make a shift in its approach, in the interest of justice, whenever required. Chapter VIth, therefore, deals with the judicial approach adopted by the apex court while dealing with the issues relating to the freedom of press .

Finally, in the last chapter, on the basis of the present study a conclusion has been expressed on the issues as raised in the object of the thesis.

I hope that the present study would open new avenues regarding the freedom of press and also encourage further studies on the aforesaid subject.